

1 Graham Bernstein
2 3525 Del Mar Heights Road #253
3 San Diego, CA 92130
4 Phone: 858-627-0064
5 Fax: 858-627-0065

FILED
2012 MAR 26 AM 10:01
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY **R** DEPUTY

6 GRAHAM BERNSTEIN, IN PRO PER

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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 Graham Bernstein, an individual,

Case No. **12 CV 07 17 AJB JMA**

14 vs

**COMPLAINT FOR MONEY DAMAGES
PURSUANT TO 29 U.S.C. 502 (a) and 1004
et. seq. (Employee Retirement Income
Security Act of 1974, as amended):**

15 HEALTHNET LIFE INSURANCE COMPANY
16 and Does 1-10 Inclusive Defendants

- 17 1. False Pretenses and False Representations
18 2. Breach of Contract/Fiduciary Duties
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23 Plaintiff Graham Bernstein, alleges as follows:

24 **NATURE OF THE ACTION AND JURISDICTION**

25 1. This case is a proceeding brought specifically under 29 U.S.C. sections
26 502 (a) and 1004 et. seq., known as the Employee Retirement Income Security Act of
27 1974 (herein "ERISA"), and thus this Court has jurisdiction.

1 10. Plaintiff is informed and believes and thereon alleges that:

2 a. ACSC confirmed the availability and applicability of proper medical insurance
3 coverage with defendants via telephone call on October 4, 2011 with
4 Kelly at the offices of defendants at 1-800-641-7761. ACSC was advised
5 by defendants that the medical coverage provided by defendants for the
6 subject procedure would be covered at 50% of the reasonable and customary
7 charges by the clinic utilized for the procedure as an out of network provider,
8 subject to a \$6,000.00 deductible charge and a \$12,000.00 stop loss and
9 that said insurance was currently in effect, and had been in effect since
10 August 1, 2010. In that the "quote" by defendants of available insurance
11 coverage was applicable to the proposed procedure on plaintiff scheduled for
12 October 7, 2011 and was acceptable to ACSC, that entity agreed to
13 provide the medical clinic services in question for said sum on behalf of
14 plaintiff.

15 b. Based upon the representations of defendants of available medical insurance
16 coverage, as outlined herein, the procedure was performed by Dr. Michael
17 Khalil on October 7, 2011, at ACSC's facility.

18 c. Neither plaintiff nor ACSC would have agreed to perform the subject
19 procedures without having been assured prior to the performance that
20 defendants would cover and pay for the procedures and clinic costs as
21 outlined herein.

22 d. Thereafter, ACSC caused its billing to be sent to defendants for
23 the services provided to plaintiff on October 7, 2011, in the total sum of
24 \$16,842.28. A copy of the billing is attached hereto, marked
25 Exhibit "A", and incorporated by reference.

26 e. On or about November 15, 2011, defendants issued payment on medical
27 claim with their written "Explanation of Benefits "EOB", and sent a check to

1 ACSC for only \$4,210.57 of provider's billing for the services
2 of October 7, 2011, declining to pay the balance which plaintiff alleges
3 defendants should have paid. A copy of the explanation of benefits
4 is attached hereto, marked Exhibit "B", and incorporated by reference.

5 f. Plaintiff and ACSC have asked defendants to pay the quoted
6 usual and customary charges but defendants have refused to do so. See
7 Exhibit "C" and incorporated by reference.

8 11. Plaintiff reasonably relied upon the representations of defendants to the
9 prospective treating clinic, as set forth above, in making the decision to proceed with the
10 above-described procedures. Plaintiff would not have allowed the procedures to take place
11 without assurance from defendants that the medical insurance through defendants and the Plan
12 would cover the costs quoted by defendants and accepted by the treating clinic. Plaintiff is
13 informed and believes and thereon alleges that defendants should have paid an additional
14 approximately \$8,421.14 on the procedure over and above the amounts defendants did pay.

15 12. The representations by defendants to ACSC were in truth and fact
16 false. Plaintiff was unaware of the falsity thereof, as was ACSC, and both plaintiff
17 and ACSC reasonably relied thereon. Accordingly, the procedures were performed
18 on plaintiff as scheduled, and defendants have not paid for that portion of the costs thereof
19 that they agreed to do.

20 13. Plaintiff is informed and believes and thereon alleges that defendants either
21 misrepresented the nature of the available medical insurance coverage in providing the
22 confirmation of coverage, or, alternatively, wrongfully failed and refused to honor their legal
23 commitment to plaintiff and the treating clinic, or both.

24 14. Plaintiff is informed and believes and thereon alleges that defendants, and each
25 of them, have engaged in a pattern of refusal to pay proper benefits in situations similar to that
26 of plaintiff, that requests for review and/or appeal are fruitless, that defendants have failed to
27 follow Department of Labor guidelines and/or regulations concerning the review and/or

1 consideration of payments, may have improperly provided authorization for plaintiff's subject
2 procedure, may have improper or no claims procedures, and/or failed to maintain reasonable
3 claims procedures as required by 29 CFR section 2560.503.1. Further, to the extent any appeal
4 was made, defendants review process did not provide a reasonable and/or accurate explanation
5 for the decision and/or basis for the denial of the claim, further, to the extent that the subject
6 medical insurance contract ("Plan") between plaintiff's employer and defendants provides any
7 discretion to defendants, that discretion has been abused and any review of the decisions by
8 defendants should be undertaken by way of a de novo review. Defendants' denial of benefits
9 herein constitutes a breach of the Plan, violates the obligations and duties owed to plaintiff by
10 the defendants thereunder, and imposed by the State of California, insofar as those laws relate
11 to the regulation and business of insurance.

12 15. Plaintiff has been damaged in that plaintiff contractually agreed with the medical
13 clinic provider to pay for the total of its billings for the procedure unless the charges were paid
14 by defendant health insurance providers pursuant to the representations of said defendants to the
15 medical clinic provider. Accordingly, plaintiff has been requested to make payment of provider's
16 billings described above, less such portion as was paid by defendants, and has suffered damages
17 thereby. Had defendants paid the 50% of the "usual and customary" charges made by the medical
18 services provider as they had agreed to do in authorizing the procedure, plaintiff would have no
19 liability other than any applicable deductible/co-insurance portion.

20 16. Pursuant to the provisions of 29 U.S.C. 1132(g)(1), plaintiff is entitled to the
21 payment by defendants of plaintiff's actual attorneys fees incurred herein, and so demands.

22 FIRST CAUSE OF ACTION

23 FALSE PRETENSES and FALSE REPRESENTATIONS

24 17. Plaintiff refers to and incorporates by reference paragraphs 1 through and
25 including 16, hereinabove, as though set forth at this point.

26 18. The conduct of defendants as above-described supports a finding that defendants

1 have damaged plaintiff by committing false pretenses and/or false representations, in violation of
2 their duties and responsibilities under ERISA.

3
4 **SECOND CAUSE OF ACTION**

5 **BREACH OF WRITTEN CONTRACT AND FIDUCIARY DUTIES**

6 19. Plaintiff refers to and incorporates by reference paragraphs 1 through and
7 including 16, hereinabove, as though set forth fully at this point.

8 20. Defendants, and each of them, had at all times herein mentioned an underlying
9 written contract with the employer of plaintiff (the "Plan") to provide health care benefits
10 pursuant to the contract between those parties, of which contract plaintiff and plaintiff's health
11 care providers are third party creditor beneficiaries. Plaintiff does not have a copy of said written
12 contract, but will seek to amend this complaint to provide a copy thereof when it becomes available.
13 The duties of defendants are of a fiduciary nature, are not able to be waived by defendants, and
14 plaintiff and plaintiff's health care providers are third party creditor beneficiaries thereof.

15 21. Under the terms of the written contract for health care benefits, as well as under
16 the terms of ERISA, defendants agreed to act in good faith, and are required to act in good faith
17 in the administering of health care benefits for persons covered by the terms of said contract,
18 including plaintiff.

19 22. Defendants have breached their contractual duties, as well as their fiduciary duties
20 of good faith, as more fully outlined hereinabove, and thereby breached the subject written
21 contract (the "Plan") as above-described, and are thereby in violation of the provisions of ERISA.

22 Wherefore, Plaintiff prays for judgment as follows:

23 A. For general damages in the sum of any and all payments which defendants should have
24 paid under the terms of their contract (the "Plan") with plaintiff's employer, the sum of
25 \$8421.14, more or less, according to proof;

26 B. For interest at the maximum legal rate on such sums as are deemed owed by defendants;

27 C. For actual attorneys fees in accordance with the ERISA Act and/or California Business &

1 Professions Code, section 17200 et.seq.;

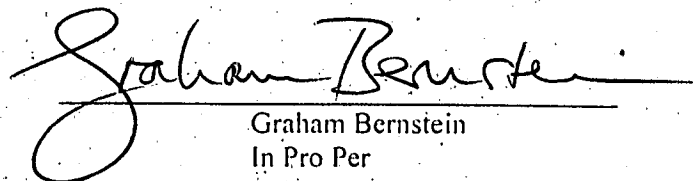
2 D. For costs of court incurred herein; and

3 E. For such other and further relief as the court may deem just and proper.

4 Dated: 3/22/12

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Graham Bernstein
In Pro Per

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UB-04 CMS-1450 APPROVED OMB NO. 0938-0997  Printed on Recycled Paper NUBC  LIC3810506 THE CERTIFICATIONS ON THE REVERSE APPLY TO THIS BILL AND ARE MADE A PART HEREOF



PO Box 10406
Van Nuys, CA 91410-0406

AMBULATORY CARE SURGICAL
CENTER
5225 KEARNY VILLA WAY
SAN DIEGO CA 92123-1410

Process Date Nov 15, 2011
Remittance No HNLFF-0015633446
Payee No 27-1402769 A
SVC Provider AMBULATORY CARE
SURGICAL
SVC Provider No 27-1402769 A

REMITTANCE ADVICE

Patient Name BERNSTEIN, GRAHAM
SubID R05031854
SSN XXX-XX-5876

Your Acct #
Claim # 2011304-NF7-163
Receipt Date 10/11/2011

HEALTH NET PPO

Questions? Contact us at: provider_services@healthnet.com or 1-800-929-9224
PO Box 10406 Van Nuys, CA 91410-0406

Svc Dates - From/Thru	CPT	Modifier 1 2 3 4	Billed Amount (\$)	Amount Not Allowed (\$)	Allowed Amount (\$)	Patient Copay Coinsurance Deductible	Total Patient Resp. Amt (\$)	Benefit Payable (\$)	Ex Code
10/07/11			16,842.28	8,421.14	8,421.14		8,421.14	4,210.57	96
						4,210.57	4,210.57		CO-INS
Total			16,842.28	8,421.14	8,421.14	4,210.57	12,631.71	4,210.57	

Member Plan Code 1AY3

Total Claims Payable 4,210.57
Total Check Amount 4,210.57

Explanation Code Description

96 - Amount exceeds the maximum allowable for this benefit.





**Ambulatory
Care
Surgery
Center**

November 23, 2011

Health Net Appeals
Po Box 10406
Van Nuys, CA 91410-0406

Attention - Provider Appeals Unit

Patient: Graham Bernstein
DOS: October 7, 2011
ID#: R05031854
Insured: Self
Emp: Children's specialists of San Diego
Group#: N328AA

Exhibit C

Appeal

To Appeals Department:

We are requesting an independent review of the claim for proper reimbursement for the October 7, 2011 date of service for Graham Bernstein.

When we called in advance of the surgery for benefits, we were informed by Health Net and we documented in writing on two separate phone calls that the benefit reimbursement for non-contracting facility providers would be 50% of usual and customary, with a \$6,000.00 deductible and a \$12,000.00 stop loss. During the phone calls we specifically asked and it was stated that the reimbursement was not based upon managed care rates with a fixed or limited fee schedule for non-contracting providers such as the \$4,210.57 payment and allowable amount of \$8,421.14. Knowingly misstating facts and policy benefits may be a violation of state courts rulings as well as a breach of the Unfair Claims Settlement Practices Acts.

The procedure, a colonoscopy with hemorrhoid banding, was performed in a major operating room at our state licensed and Medicare certified surgery center in San Diego, California. The amount paid is not acceptable reimbursement considering our geographic location, procedure performed, time spent in our facility, i.e. OR, pre-op and recovery room and the itemized supplies and equipment used. The surgery center is very much aware of usual and customary rates for the San Diego area for the procedure mentioned above. The Surgery center tracks usual and customary rates for a wide variety of insurance companies and has the supporting backup data to show reasonable and customary rates in our geographical area. Your allowance of \$8,421.14 for a surgery center facility fee for the procedure mentioned above is not usual and customary. **It has been shown that insurance companies use non-independent review organizations to determine usual and customary rates for out of network claims. It has also been shown that these non-independent review companies have been using inappropriately low reasonable and customary rates for out of network claims. Please have this claim reviewed by a truly external and independent review organization so that it will be paid at appropriate out of network usual and customary rates.**

We would appreciate your immediate attention to this appeal, so that we may resolve this matter. We have enclosed a copy of the explanation of benefits. Please respond to us in a timely manner. Enclosed is a copy of the patient's authorization for us to appeal this claim.

Sincerely,

Billing and Collection



Health Net Life Insurance Co,
P.O. Box 10406
Van Nuys, California 91410-0406
www.healthnet.com

01/11/2012

Ambulatory Care Surgical
5225 Kearny Villa Way
San Diego, CA 92123

Exhibit c
Denial

Subscriber Name: Graham Bernstein
Patient Name: Graham Bernstein
Health Net ID #: R05031854MM1
Patient Account #: none
HN Case #: 11334C00838
Claim #: 2011304-NF7-163
Date(s) of Service: 10/07/2011
Billed Amount: \$16,842.28

Dear Provider:

I am responding to your request for a claim dispute, dated 11/23/2011, regarding the above-referenced claim.

In consideration of your dispute, the following information was reviewed:

- Dispute letter dated or received on 11/30/2011
- Remittance Advice or Explanation of Benefits (EOB) issued on 11/15/2011

Based on our review of this information, Health Net's Provider Appeals Unit has determined to uphold our previous determination for the following reasons: Claim was processed based on member's out of network benefit plan at 50% of billed charges less 50% copayment.

If you believe all or part of the claim has been wrongfully denied or rejected and you have been unable to resolve your dispute with Health Net, you may have the matter reviewed by the California Department of Insurance. You may contact the California Department of Insurance at 300 S. Spring Street, Los Angeles, CA 90013. The Department also has a toll-free telephone number (1-800-927-HELP (4357)) and a TDD line (1-800-482-4TDD Ext. 4833) for the hearing and speech impaired. The Department's Internet website is www.insurance.ca.gov. Out of state members may call 1-213-897-8921.

Billing Dispute External Review Board (BDERB)

You have now exhausted Health Net's internal review process for the subject claim(s). Health Net contracts with Independent Medical Expert Consulting Services, Inc (IMEDECS) to perform Billing Dispute External Reviews of qualifying disputes. To learn more about the process, or determine if your claim qualifies for BDERB, please visit Health Net's website at www.healthnet.com.

If you should have any additional questions or concerns, please contact our Provider Services Department at (800) 641-7761. Provider Service Department Representatives are available Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

Sincerely,
Adelle J.
Provider Appeals Unit

JS 44 (Rev. 12-07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Graham Bunstein

DEFENDANTS

Health Insurance Co.

MAR 26 AM 10:00

(b) County of Residence of First Listed Plaintiff San Diego

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
County of Residence of First Listed Defendant

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

858-627-0064

Graham Bunstein pro per

Attorneys (If Known)

unknown

3525 DELMAR HEIGHTS RD #253 SAN DIEGO CA 92130

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

☐ 1☐ 1

Incorporated or Principal Place of Business in This State

☐ 4☐ 4

Citizen of Another State

☐ 2☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

☐ 6☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 430 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 440 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 820 Securities/Commodities Exchange	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395H)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

☒ 1 Original Proceeding

(Place an "X" in One Box Only)

☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 502(a) & 1004 ET. SEQ

Brief description of cause:

ERISA claim for Health Insurance coverage

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$ 8421.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATIONSHIP

IF ANY

RECEIVED

DATE

3/22/12

FOR OFFICE USE ONLY

MAR 26 2012
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY (U) \$350.00 CA 0362 DEPUTY

SIGNATURE OF ATTORNEY OF RECORD

pro per

Graham Bunstein

JUDGE

MAG. JUDGE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS036822
Cashier ID: nsiefken
Transaction Date: 03/26/2012
Payer Name: WALK-UP CUSTOMER

CIVIL FILING FEE
For: WALK-UP CUSTOMER
Case/Party: D-CAS-3-11-CV-000717-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1363
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$53.00
charged for any returned check.